

APPENDIX

McNamara v. Calvin, unreported, No. 11,524, U.S.D.C., ND. Ill., E. D.

The facts are stated in 1 *U. of Chi. L. Rev.* 328 to be as follows:

“* * * A bill for temporary restraining order and for injunction, dated March 9, 1932, alleges that complainant, a citizen of Michigan, was engaged in interstate trucking between points in Michigan, Illinois, and Wisconsin; that he made local deliveries and pick-ups of interstate shipments directly with the interstate trucks, without using terminal facilities in Chicago; that defendants, citizens of Illinois and officers of the Chicago Teamsters Union and of a company which operated a trucking-delivery terminal in Chicago, desired that complainant stop local deliveries and pick-ups and make use of the Chicago terminal at the usual charges; that, in order to compel complainant to do this, defendants by threats and other intimidations interfered with complainant's employees, and threatened complainant with physical violence and with material damage to his business; that complainant therefore stopped his local operations and was prevented from fulfilling certain contracts, thereby suffering damages in excess of \$3,000.

“A temporary order restrained defendants from (1) interfering with complainant's business or property or his contracts, employees, or equipment, (2) preventing local deliveries and pick-ups without the use of the Chicago terminal, (3) interfering even by persuasion with complainant's employees in the performance of their duties in complainant's interstate business or (4) interfering in any way with complainant's handling of goods in interstate commerce.

"Under the requirement of Section 16 of the Clayton Act, complainant filed a bond (with surety) in the sum of \$1,000, conditioned upon payment to defendants of 'all damages which may be sustained * * * by reason of the wrongful issuance of * * * restraining order and/or injunction and also such costs and damages as shall be awarded against the said complainant in case said restraining order and/or injunction shall be dissolved.'

"On April 1, 1932, no answer having been filed, a preliminary injunction in substantially the same terms as those of the order was issued, and the bond was continued without change. Defendants thereafter filed separate answers (one for the union group and one for the terminal group) and afterwards moved dissolutions of the temporary injunction. After several continuances the injunction was dissolved and the bill was dismissed on November 4, 1932, *upon motion of complainant*. Shortly thereafter, the terminal group of defendants filed a suggestion of damages, claiming attorneys' fees as damages under the bond, because of the provision of Section 7 of the Norris Act of March 23, 1932. Demurrer to the suggestion was sustained as to fees earned prior to March 23, and overruled as to fees earned after that date to November 4, and upon hearing judgment was given for defendants in the sum of \$1,000 for fees incurred between March 23 and November 4, the court refusing to admit proper evidence as to the reasons for the dismissal of the bill on complainant's motion."

The unreported opinion of Judge George E. Q. Johnson upon the suggestion for damages and complainant's demurrer thereto, which was copied from the file of the cause No. 11,524, U. S. D. C., N. D. Ill., E. D., is as follows:

"The matter comes on to be heard before the Court on hearing of suggestions of damages filed

by the defendant, growing out of dissolution of an injunction granted on motion of the plaintiffs. Defendants waived damages except as to attorney's fees. A temporary restraining order had been entered and on April 1st, the same was ordered to stand as a preliminary injunction, and the Court entered a proper order that the bond of \$1,000 given at the time of the issuance of the temporary restraining order 'should stand and remain in full force and effect until the further order of this Court.'

"On March 23, 1932 the so-called Norris Anti Injunction Bill was signed by the President. Prior to that time damages in the nature of attorney's fees had been denied by the courts. The Norris Act expressly provided that attorney's fees should be allowed. That was the law on the date the bond was ordered to stand. If the surety objected it had a right at that time to withdraw from the bond. The bond then stood with the Act of March 23, 1932 written into it. The principal of course would be liable irrespective of the liability of the surety on the bond.

"The Court holds as a matter of law that the plaintiffs are not liable in damages for attorney's fees which accrued prior to March 23, 1932, but are liable for damages for attorney's fees which have accrued subsequent to March 23, 1932, and the defendants may offer evidence in support of their suggestions for damages which arose by way of attorney's fees for services rendered subsequent to March 23, 1932."

